



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/172266

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 25, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Oconto County Department of Health and Human Services in regard to Medical Assistance, a telephonic hearing was held on March 22, 2016, at Oconto, Wisconsin. The petitioner's wife/representative sent additional paystubs and information to the agency for review, and a final written closing argument by the agency. Due to computer problems, the agency requested to extend its submission to DHA and to [REDACTED] to April 27, 2016. The agency timely submitted its closing argument with attached documents to DHA and to [REDACTED] on April 26, 2016 which is received into the hearing record.

The issue for determination is whether the Department correctly increased the petitioner's nursing home liability co-pay to \$1,196 effective March 1, 2016 under spousal impoverishment policy.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Representative:

[REDACTED] wife  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED] ESS

Oconto County Department of Health And Human Services  
501 Park Avenue  
Oconto, WI 54153-1612

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Oconto County who has resided in a nursing home for about the past three years.
2. The petitioner receives Institutional MA for his nursing home care.
3. The petitioner's community spouse is [REDACTED] [REDACTED] [REDACTED].
4. [REDACTED] works as a truck driver for [REDACTED] and receives weekly paystubs.
5. Petitioner's wife provided 2015 IRS income tax returns with Schedules A and C to the county agency.
6. Petitioner's wife's 1040 included the following income information for herself and her husband in their 2015 tax return: a) her earned income of \$40,855 plus her graphic design business income of \$277; b) petitioner's monthly social security retirement income of \$1,241 with an adjusted gross income of \$51,442 (line 37 of that 2014).
7. Their 2015 tax return included the following deductions or work-related expenses: a) itemized deductions for [REDACTED] [REDACTED] work expenses totaled \$16,284 and her total business expenses of \$13,402. After applying the petitioner's deductions/expenses, her total itemized deductions totaled \$24,196 (line 40 of 1040 return which includes unreimbursed employee business expenses – from 2108 EZ).
8. The county agency sent a January 25, 2016 notice to the petitioner stating that his patient liability at the nursing home was increasing to \$1,196 effective March 1, 2016.
9. On April 6, 2016, the petitioner's wife submitted to the county agency her paystubs for November, 2015 and March, 2016).
10. Based upon the new payroll evidence submitted by petitioner's wife, ESS [REDACTED] [REDACTED] in her written closing argument stipulated based upon petitioner's wife's March, 2016 pay stubs to reduce the petitioner's patient liability from \$1,196 to \$1,099.13 as of March, 2016.
11. ESS [REDACTED] submitted an April 26, 2016 detailed closing argument with extensive documentation to establish that she correctly recalculated the petitioner's patient liability at the nursing home to be \$1,099.13 as of March 1, 2016.

### **DISCUSSION**

After an institutionalized person is determined eligible for MA, a county agency must calculate the amount of income the institutionalized person must contribute to defray the cost of care incurred by MA on his or her behalf on a monthly basis. See *MA Eligibility Handbook (MEH)*, 27.7.1., viewable online at [www.emhandbooks.wi.gov/meh-ebd/](http://www.emhandbooks.wi.gov/meh-ebd/). The amount to be paid by the institutionalized person is his/her "patient liability."


The Wisconsin Administrative Code provision that controls the patient liability computation reads as follows:


(d) *Computing income available towards cost of care.*



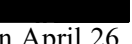


Institutionalized recipients of MA who are determined eligible under s. DHS 103.06 and this section shall apply their available income toward the cost of their care after deducting the income disregards in this paragraph. In this paragraph, "available income" means any remaining income after the following reductions are made:

1. A personal needs allowance, as provided under s.49.45(7) (a), Stats., and
2. If employed, the first \$65 and one-half of the remainder of gross earnings;
3. The cost of health insurance;
4. Necessary medical or remedial care recognized under State of Wisconsin law but not covered by MA;
5. The actual amount paid by the institutionalized person for support of a person for whom the institutionalized person is legally responsible ...
6. The monthly cost of maintaining a home when the conditions of DHS 103.06(1)(b)3 are met, but not to exceed the SSI payment level for one person living in that person's own household.

Wis. Admin. Code §DHS 103.07(1)(d). See, in accord, the federal rule at 42 C.F.R. §435.725.

For a Medicaid member in a medical institution who does not have a [community spouse](#) , subtract the following from the person's monthly income:

- a. \$65 and ½ earned income [disregard](#)  ([15.7.5 \\$65 and ½ Earned Income Deduction](#)).
- b. Monthly cost for health insurance ([27.6.4 Health Insurance](#)).
- c. Support payments ([15.7.2.1 Support Payments](#)).
- d. Personal needs allowance ([39.4 EBD Assets and Income Tables](#)).
- e. Home maintenance costs, if applicable ([15.7.1 Maintaining Home or Apartment](#)).
- f. Expenses for establishing and maintaining a court-ordered guardianship or protective placement, including court-ordered attorney and/or guardian fees ([27.6.6 Fees to Guardians or Attorneys](#)).
- g. Medical Remedial Expenses. See [27.7.8 Payment for Non-Covered Services](#).

During the March 22, 2016 hearing, the petitioner's wife and representative argued that the county agency incorrectly and inaccurately calculated the petitioner's patient liability to increase to \$1,196 as of March 1, 2016 based upon alleged error in deducting her work-related expenses. The record was held open for petitioner's wife to submit new evidence and paystubs for review by ESS , and for Ms.  to document how the patient liability had been calculated including her work-related expenses.  submitted that new evidence and based upon that new evidence ESS   submitted an April 26, 2016 detailed closing argument with extensive documentation to establish that she correctly recalculated and reduced the petitioner's patient liability at the nursing home from \$1,196 to \$1,099.13 as of March 1, 2016 and included the proper work-related deductions. See above Preliminary Recitals. The petitioner was unable to provide any reliable evidence to establish any error in the county agency's calculation of her deductions or work-related expenses (Finding of Fact #7 above), or to refute that the county agency correctly re-calculated petitioner's patient liability to be \$1,099.13 based upon a thorough review of the household income and expenses of her husband and herself. Accordingly, based upon the above, I conclude that the Department incorrectly increased the petitioner's nursing home liability co-pay to \$1,196, but correctly re-calculated and reduced petitioner's patient liability at the nursing home to be \$1,099.13 as of March 1, 2016.

### **CONCLUSIONS OF LAW**

1. The county agency incorrectly increased the petitioner's nursing home liability co-pay to \$1,196 effective March 1, 2016 under spousal impoverishment policy.
2. Based upon the new evidence submitted to the agency, the county agency correctly re-calculated and reduced petitioner's patient liability at the nursing home to be \$1,099.13 as of March 1, 2016.

**THEREFORE, it is**

**ORDERED**

The matter is remanded to the county agency with instructions to reduce the petitioner's nursing home liability from \$1,196 to \$1,099.13 retroactive to March 1, 2016, within 10 days of the date of this decision.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

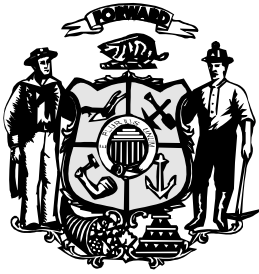
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 2nd day of May, 2016.

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\sGary M. Wolkstein  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on May 2, 2016.

Oconto County Department of Health And Human Services  
Division of Health Care Access and Accountability